In the Supreme Court of the United States

OCTOBER TERM, 1960

NO. 10, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

ON MOTION FOR JUDGMENT ON AMENDED COMPLAINT

MEMORANDUM FOR THE UNITED STATES REGARDING LOUISIANA'S SUGGESTED REVISION OF PARAGRAPH 3 OF THE PROPOSED DECREE

By telegram of November 9, 1960, the Attorney General of Louisiana has submitted to the Court a "Suggested Revision by Louisiana of Article or Paragraph 3 on Page 2 of the Proposed Decree." For the convenience of the Court, that suggested revision is set out in the Appendix at page 6, *infra*. Upon examination, we conclude that Louisiana's suggestions are either unnecessary or incorrect. We stand by the form of decree we have proposed.

1. Louisiana would require that the State's seaward *boundary,* as well as its *coast line,* be agreed

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upon or determined before any accounting is required. In our view it is preferable to avoid use of the term "boundary," since we understand from the opinion of the Court that a State's boundary within the meaning of the Submerged Lands Act, which is the issue here, may be different from its boundary for other purposes. We have exactly followed the language of the Court's conclusions in defining the States' rights to the submerged lands and resources within stated distances from their coast lines, without characterizing those limits in terms that would add anything to the effect of this decree and which, if improperly applied in other contexts, could lead to serious domestic or international complications, not intended by the Court or relevant to the present issues.

2. Louisiana would provide for compliance with the terms of the agreement of October 12, 1956, regarding allocation, withdrawal and payment of funds impounded pursuant to that agreement.[1] We of course intend to comply with the agreement that we have made, and if the Court considers it appropriate to include such a requirement in the decree, we do not object, although we think such a provision unnecessary. (It must be observed, of course, that the agreement affects only Louisiana and not the other defendants.)

[1] This agreement was filed with the Court on October 12, 1956, in accordance with the Court's order of June 11, 1956 (351 U.S. 978), but Louisiana is mistaken in describing it as having been "approved by the Court." The Court has made no order respecting it, nor has it been asked to do so.

3. Louisiana would eliminate our provision for progressive settlements on the basis of partial determinations of the States' coast lines, and would provide instead that a State's entire coast line and boundary must be determined before any accounting is required of it. We prefer the provision we proposed, because of the possibility that delays in settling one or two particularly difficult portions of the coast line might otherwise needlessly defer any accounting with respect to areas where all doubts have been resolved. Moreover, it is our understanding that settlement on a progressive basis was contemplated in the agreement of October 12, 1956. Paragraph 15 of that agreement provides:

> This stipulation and agreement shall terminate as to any area, upon the final settlement or determination of the aforesaid controversy with respect to such area; and thereafter the successful party shall have exclusive jurisdiction and control over the area so determined to be owned by it to the extent fixed by the decision in the final adjudication. In the event of the final settlement or determination of the controversy, with respect to a part or parts of the disputed area, leaving another part or other parts still in dispute, this agreement shall be deemed to continue to apply to all areas still in dispute * * *.

4. In our proposed provision for interim settlements as determination of a State's coast line progresses, the State would be allowed to withhold sums to cover its reciprocal undetermined claims against the United States under Section 3(b)(3) of the Submerged Lands Act. This seems reasonable to pro-

tect a State against the burden of being required to make interim payments on the basis of a partial boundary determination, which it might later be entitled to recoup if its claims as to the location of the remainder of the boundary were sustained. However, if all payments are to await complete determination of the boundary as Louisiana suggests, this element of uncertainty will be removed. The same boundary determination that will fix the State's obligation will also fix that of the United States. Consequently, in the event that the Court accepts Louisiana's views as to the accounting, this provision for withholding, if retained at all, should be limited to "any amount due" to the State, omitting reference to amounts "claimed to be due." The claims will have been reduced to certainty by the time of final payment by the State.

However, it appears to us that if the decree is to effectuate the agreement of October 12, 1956, as Louisiana asks, this provision for withholding should be omitted. Paragraph 14 of that agreement (included at Louisiana's insistence) provides:

> Any sums required to be impounded by either party hereto, or to be paid over or released to the other party by any party hereto, shall be impounded, paid or released without reference to, limitation by, or offset against any claim against or liability or obligation of the other party, but nothing herein contained shall limit such right as either party may have to assert separately any other claim which it may have against the other party, or any third party.

While we were willing to waive the benefit of that provision so far as concerned interim payments where a final balance could not yet be struck, it seems to us inappropriate to leave such withholding to the defendants' discretion with respect to the final judgment when all the facts will be known. If there are to be no interim settlements, we suggest that provision regarding offsetting claims be deferred until entry of the final judgment settling the accounts rendered. Then the Court will be better able to judge the propriety of such a provision in the light of the offsetting claims as actually asserted at that time.

5. Louisiana suggests that its obligation to make payment be specifically conditioned on its account having been rendered, filed, and approved by the Court. We have no objection to such an explicit provision, but, again, we consider it to be unnecessary; clearly, no actual payment can be required before the amount due is definitely fixed. The reference to payment in our proposed decree was intended to indicate that payment would be required at such time and that the State's obligation would not be satisfied merely by rendition of an account. Approval of the account would, of course, be a prerequisite.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

NOVEMBER 1960.

APPENDIX

Suggested Revision by Louisiana of Article or Paragraph 3 on Page 2 of the Proposed Decree

"3. Whenever the locations of the coast line and seaward boundary of any of the Defendant States shall be agreed upon or determined, such state shall thereupon promptly render to the United States a true, full, accurate and appropriate account of any and all sums of money derived by such state since June 5, 1950, either by sale, leasing, licensing, exploitation or otherwise from or on account of any of the lands or resources described in Paragraph 1 hereof which lie seaward from the actual boundary of the state, as agreed upon or determined, and, after said account has been rendered and filed with and approved by the Court, shall promptly pay to the United States a sum equal to such amounts shown by said account as derived by said state; provided, however, that a state may withhold payment of a sum equal to any amount due or claimed to be due to the state from the United States under Section 3(b)(3) of the Submerged Lands Act, 43 U.S.C. 1131 (b)(3) until the amount so due the state shall have been agreed upon and determined and paid to the state or offset against payments due from the state to the United States; and provided further, that the Interim Agreement between the United States and the State of Louisiana, dated October 12, 1956, and approved by the Court, be recognized and that the allo-

cation withdrawal and payment of impounded funds be made in accordance with all appropriate, pertinent and governing provisions of said Interim Agreement, particularly Article 9 thereof."

U.S. GOVERNMENT PRINTING OFFICE: 1960